Supreme Court, U.S.
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IN THE

Supreme Court of the United States

XLP CORPORATION, *et al.*,

Petitioners,

v.

THE COUNTY OF LAKE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE ILLINOIS APPELLATE CIRCUIT COURT
FOR THE **Second Judicial District**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the confusion and differential interpretation of this Court's decision in *City of Los Angeles v. Alameda Books,* coupled with the disjointed framework of this Court's prior fractured decisions in the area of adult entertainment, result in both First Amendment and Due Process violations because of the conflicting and inconsistent evidentiary standards developed in the Federal Circuits and State Appellate courts?

2. Does a local government have the unfettered right to "rely" on out of date and irrelevant pre-enactment legislative data to impose limits on the operation of First Amendment protected businesses that would ultimately result in the demise of the businesses and the loss of all such protected speech within an entire urban county, in direct conflict with this Court's decision in *City of Los Angeles v. Alameda Books*?

PARTIES TO THE PROCEEDINGPARTIES TO THE PROCEEDING

The Petitioners, who were Plaintiffs in the trial court, and Appellants in the Illinois State Apellate Courts, are XLP Corporation, an Illinois Corporation, Michael Christofalos, President, d/b/a "Dancer's," and Danny Christofalos, d/b/a/"Baby Dolls."

The Respondent is the County of Lake, a political subdivision of the State of Illinois, the Defendant in the trial court, and the Appellee in the State Appellate forums.

All parties to the proceedings below are parties to this Petition.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Counsel for the Petitioners informs this Court that no party corporarte entitiy has any parent, and no publicly owned company holds any ownership interest in the corporations.

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OPINIONS BELOW

The Opinion of the Illinois Appellate Court, Second Judicial District, dated May 26, 2005, and published as modified on July 8, 2005, 295 Ill.Dec. 329 (Ill. App. 2005) is reproduced at Appendix A to this Petition. The Order of the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois, dated November 25, 2003 is reproduced at Appendix B.

JURISDICTION

The Illinois Appellate Court, Second Judicial District, entered its Opinion on May 26, 2005, and Petitioners filed a Notice of Intent to File Petition for Leave to Appeal with the Illinois Supreme Court on June 16, 2005. Petitioners filed said Petition for Leave to Appeal with the Illinois Supreme Court, which highest state court declined to exercise discretionary jurisdiction on December 1, 2005. (App. C). This Court has jurisdiction pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional provisions

The First Amendment to the Constitution of the United States of America provides that "Congress shall make no law . . . abridging the freedom of speech . . ."

Statutory provisions

The County of Lake adopted a Comprehensive Adult Entertainment Ordinance, 6:1-15, which regulates every permutation of the operation of all businesses deemed to provide "adult entertainment" in the County. The provisions of that Ordinance are reproduced as Appendix D.

STATEMENT OF THE CASE

Petitioners, XLF Corporation, an Illinois Corporation, Michael Christofalos, as President of XLP, d/b/a "Dancer's," and Danny Christofalos, d/b/a/ "Baby Dolls," sought a discretionary appeal from the highest Illinois State Court, seeking review of the decision of the Appellate Court, Second Judicial District, affirming the judgment entered by the Circuit Court of Lake County, Illinois. The Appellate Court, Second District, rendered its decision on Petitioners' appeal from the judgment and order of the Circuit Court, which rejected all

assertions of First Amendment violations (all brought pursuant to 42 U.S.C. Section 1983) resulting from the imposition of County legislation alleged to be in direct violation of Plaintiffs' Federal Constitutional rights, and resolved all issues in favor of Lake County. In compliance with Rule 14.1(h), Petitioners state that the issues of "Federal Question" stature were the core issues in the case from its inception, as well as the core issues in all appellate review. The "Federal Questions" formed the basis of all judicial determinations made in the actions involved.

The decision of the Appellate Court was rendered on May 26, 2005. No petition for rehearing was filed. That decision, designated as a Rule 23 Order under Illinois procedural rules, is reproduced as Appendix A. The Petitioners' thereafter filed a Notice of Intent to File Petition for Leave to Appeal, and subsequently filed their Petition for Leave to Appeal, which was denied by the Illinois Supreme Court on December 1, 2005. On the basis that the highest state court declined discretionary review, the instant Petition for Writ of Certiorari is directed to the Illinois Appellate Court, Second Division, in conformity with the directives of 28 U.S.C., Section 1257.[1]

A. The Factual Background Supporting Review

As stated by the Second District Appellate Court (hereinafter "Appellate Court") in their Rule 23 Order:

> "In 1998, Lake County enacted an ordinance regulating adult uses. See Lake County Ordinance 6:1–15 (eff. February 10, 1998). In response to a court decision that called into question the constitutionality of the ordinance (see *Wisconsin Vendors, Inc. v. Lake County*, No. 99–C–8340 (N.D. Ill. 2003)), it was amended in 2001 (see Lake County Ordinance 6:1–15 (eff. October 9, 2001)). The purposes of the ordinance and its amendment were set forth by the county in preambles to the two enactments. The preamble to the original

1. See *Sullivan v. Texas*, 207 U.S. 416 (1908); *Hammerstein v. Superior Court*, 341 U. S. 491, 492 (1951); *Michigan-Wisconsin Pipeline Co. v. Calvert*, 347 U.S. 157, 160 (1954); and *Interstate Circuit, Inc. v. Dallas*, 390 U.S. 676, 678 n. 1 (1968).